1972
Dec. 15

EVAGORAS PROIOS AND ANOTHER

v.

REPUBLIC (MINISTER OF FINANCE)

[HADJIANASTASSIOU, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

EVAGORAS PROIOS AND ANOTHER,

Applicants,

and

THE REPUBLIC OF CYPRUS, THROUGH THE MINISTER OF FINANCE,

Respondent.

(Cases Nos. 360/69 and 379/69).

Public Service and Public Officers—Rights of persons in the public service of the Government of Cyprus immediately prior to the coming into operation of the Constitution (viz. *prior to Independence, August 16, 1960)—Rights safeguarded under Article 192 of the Constitution—Option of the officer concerned to claim compensation—Article 192.3—Compensation refused in the instant case on the ground that the applicants were not holding an office in the public service within the meaning of Article 192.7(a) of the Constitution—Recourse against such refusal dismissed.*

Equality—Principle of equality (or of equal treatment) safeguarded by Articles 6 and 28 of the Constitution—Principle of equality does not exclude reasonable differentiations—Non payment of compensation to applicants under Article 192.3 (supra), *and payment of such compensation to other holders of identical posts—Held that this differentiation was a reasonable and not an arbitrary one and, therefore, it does not discriminate against applicants—Because the applicants were fully aware from the terms and conditions contained in the instrument of their engagement as supervisors of co-operative societies that such service was not public service under the Colonial Government of Cyprus—And because they knew all along that they were not entitled to receive any gratuities from the Government.*

Supervisor of co-operative societies—See immediately hereabove.

Constitutional Law—Article 192 of the Constitution, safeguarding rights of persons holding office in the public service of the Colonial Government of Cyprus—See supra.

Constitutional Law—Principle of equality—Scope and effect—Articles 6 and 28 of the Constitution—See supra.

The facts of these cases are fully set out in the judgment of the learned Judge, whereby he dismissed these recourses against the refusal of the respondent to pay to them compensation claimed under Article 192.3 of the Constitution.

Cases referred to :

Christou and Others and *the Republic,* 4 R.S.C.C. 1, at p. 5;

Shener and *The Republic,* 3 R.S.C.C. 138, at pp. 141 - 142;

Boyiatzis v. *The Republic,* 1964 C.L.R. 367, at pp. 374 - 75;

Mikrommatis and *The Republic,* 2 R.S.C.C. 125, at p. 131;

Lindsley v. *Natural Carbonic Cas Co.* (1910) 220 U.S. 61;

Magoun v. *Illinois Trust* (1898) 70 U.S. 283;

Tigner v. *Texas* (1940) 310 U.S. 141.

Recourse.

Recourse against the refusal of the respondent to pay to the applicants just compensation under Article 192 of the Constitution.

A. Triantafyllides, for the applicants.

L. Loucaides, Senior Counsel of the Republic, for the respondent.

Cur. adv. vult.

The following judgment was delivered by :-

HADJIANASTASSIOU, J. : In these proceedings under

Article 146 of the Constitution, the applicants, Messrs. Proios and Tsokkos, seek to challenge the decision of the Minister of Finance in refusing to pay them just compensation under Article 192 of the Constitution, as being null and void and of no effect whatsoever.

The facts are these :-

The first applicant joined the public service on May 23, 1940, as a clerk, and after serving for a number of years in the same post, until March 31, 1947, he applied to the Registrar of Co-operative Societies for employment in that department in the post of supervisor.

The second applicant was appointed on April 1, 1947 as Supervisor of the Co-operative Societies, and was promoted to assistant district inspector on or about May 1, 1956. On April 1, 1957, he became a district inspector on a temporary basis and remained serving in that post until August 15, 1960. The said post was a first entry post only.

On March 7, 1947, the Registrar of the Co-operative Societies, in reply to the first applicant, had this to say :-

> "With reference to your application for employment in this Department, you are hereby appointed as a Temporary Supervisor with effect from the 1st April, 1947, on the following conditions :-
>
> (a) You will not be a Government Official.
>
> (b) Your salary will be on the scale of £120 per annum rising by annual increments of £6 to £180 per annum.
>
> (c) Your duties will include the usual duties of the office of supervisor of Co-operative Societies which will entail travelling in the villages.
>
> (d) If at any time you neglect or refuse or from any cause (excepting ill-health not caused by your own misconduct) you become unable to perform any of your duties or to comply with any order or with any condition hereof you may be dismissed forthwith without any notice.

(e) Your engagement may at any time be determined without assigning any reason through by giving you one month's notice thereafter in writing or on paying you one month's salary in lieu of notice.

(f) You may at any time determine the engagement upon giving to me one month's notice therefor in writing.

(g) You will receive a cost of living bonus at the rates in force from time to time for Government Officials.

(h) You will be entitled to travelling expenses and subsistence at the rates from time to time in existence for Government Officials with similar salary.

(i) Your salary, bonus and travelling expenses will be paid from the Audit and Supervision Fund established under Rule 92 of the Co-operative Societies Rules 1940 and administered by me.

2. Since you will not be entitled to any Government Gratuity, you are advised to contribute to the Provident Fund of the Co-operative Central Bank Ltd."

It would be observed that Rule 92 of the Co-operative Societies' Rules 1940, provides for the constitution of a fund to be known as the audit and supervision fund, and every registered society shall, when called upon to do so by the Registrar, make annually a contribution to such fund. There is no doubt, as it had been conceded by both counsel appearing in these cases, that the Audit and Supervision Fund has never been officially created, and the salary of the employees was paid by Government funds.

Apparently the applicant accepted the post of temporary supervisor as from 1st April, 1947, and remained serving until May 31, 1960. On June 1, 1960, he became assistant co-operative officer, a post which he held until the establishment of the Republic of Cyprus.

Because by operation of the Constitution the post held

by both applicants came under the competence of the Greek Communal Chamber, the applicant elected, in accordance with Law 52/62, to receive compensation. Regarding the first applicant, the respondents, on March 26, 1963, refused to pay him compensation, though as he claimed in the statement of facts in his application, "other persons with similar or analogous circumstances received compensation". Because applicant was feeling aggrieved, he filed recourse No. 91/63, claiming compensation under Law 52/62, which, however, was dismissed on the ground that applicant had not applied under Article 192 of the Constitution. On March 11, 1969, the first applicant, through his advocates, wrote to the Minister of Finance in these terms :-

> "We have been instructed by our client Evagoras Proios now of Nicosia to refer to Appl. No. 91/63 as well as to revisional appeal No. 43 and to request you to pay to him under Article 192.3 of the Constitution just compensation in respect of his years of service 1940 - 1960.
>
> Our client maintains that he is entitled to such compensation by virtue of Article 192.1 (3) (4) and (7) of the Constitution.
>
> All the facts and circumstances of our client's case have been set out in his aforementioned recourse before the Supreme Court as set out hereinabove but we are at your disposal for any additional information you may require.
>
> Our client is now in the public service and will retire as a public servant."

On October 4, 1969, the Director of Personnel Department who comes under the Minister of Finance, in reply, said :-

> ".... to inform you that no compensation can be paid to your client under the said Article as on the date immediately preceding the coming into operation of the Constitution he had held the post of Assistant Co-operative Officer, an office in the public service, for a period of only two and a half months on a temporary basis liable to termination

on one month's notice. As the retirement benefits of temporary Government employees are governed by General Orders III/1. 47-56 and are based on complete years of service, your client had not acquired any right to such benefit.

2. As regards his service from 1940 to May, 1960, this may be divided into two categories, *viz.* —

(a) his service as a temporary clerk in the Department of Co-operative Development from 22. 5.1940 to 31.3.1947; and

(b) his service as Supervisor of Co-operative Societies from 1.4.1947 - 31.5.1960 which was not Government Service.

3. With regard to his service at (a) above, when in 1947 Mr. Proios left the Government Service he was not eligible for any gratuity because a minimum period of seven complete years' service was required for earning a gratuity.

4. As regards his period of service mentioned at (b) above, Mr. Proios was told clearly in his letter of appointment, a copy of which is attached, that he would not be a Government official and, as he would not be entitled to any Government gratuity, he was advised to contribute to the Provident Fund of the employees of the Co-operative Central Bank. He accepted this advice and became a depositor in the said Fund. Upon his appointment as Assistant Co-operative Officer, the total amount standing to his credit in the Fund was paid to him including an amount of £444 representing the employer's (Audit and Supervision Fund's) deposits."

Regarding the second applicant, because the appropriate authority refused to pay him compensation, he filed a recourse No. 32/63, claiming compensation under Law 52/62, which was finally dismissed for exactly the same reasons as the recourse of the first applicant.

On March 11, 1969, the applicant's advocates addressed a letter in similar language like the first applicant, to the Minister of Finance. On October 4, 1969, the Director of the Personnel Department in reply told his

advocates that compensation was refused for the same reasons which he gave regarding the first applicant. (See *exhibit* 2 in recourse 379/69).

As both applicants felt aggrieved because of the refusal to pay them compensation under Article 192, they filed separately the present recourses dated November 12 and November 28, 1969. The grounds of law raised in both applications are identical, and read as follows :-

"1. Applicant alleges that he comes within the ambit of Article 192 of the Constitution and as such he is eligible for just compensation.

2. The respondents have acted contrary to Articles 6 and 28 which safeguard the principle of equality."

On December 18, 1969, counsel on behalf of the applicants filed identical particulars which read as follows :-

"1. The service of the applicant in respect of which compensation was refused comes under the definition of 'public service' as same is defined in Article 192.7 (a) of the Constitution. Consequently, respondents ought to have considered applicant's aforesaid service as coming within the ambit of Article 192 and pay to him compensation as provided under Article 192.3 of the Constitution.

2. Respondents have paid to other holders of an identical post just compensation. Such other officers are applicants in Appl. Nos. 29/63, 138/63, 139/63, 140/63, 149/63 and 154/63. All above mentioned officers were compensated in respect of their years of service as supervisors unlike applicant who in respect of his years of service as Supervisor received no compensation whatever."

On March 19, 1970, these two cases were heard together, and counsel on behalf of both applicants contended that the applicants service as supervisors is public service within the meaning of that term in Article 192, paragraph 7 of the Constitution, and argued that they were entitled to the benefits provided under paragraph 3 of Article 192.

Counsel further argued that in the case of the appli-

cants, service under the Government does not mean only public servants in the strict sense, but that it means anyone who was pleasing the Government in return of remuneration.

Counsel on behalf of the respondent, on the contrary, has contended that the post of supervisor is not covered by paragraph 7(a) of Article 192, since both applicants were not in the service of the Government of the then Colony of Cyprus; and because the salary of that post was not provided out of the budget of the Colony. He relies on the authority in *Alexandros Christou and Others* and *The Republic* (1962 - 1963) 4 R.S.C.C. 1 at p. 5.

I think that in order to decide whether the service of both applicants is within the meaning of public service, I should turn to paragraph 1 of Article 192, which is in these terms :-

> "Save where other provision is made in this Constitution any person who, immediately before the date of the coming into operation of this Constitution, holds an office in the public service shall, after that date, be entitled to the same terms and conditions of service as were applicable to him before that date and those terms and conditions shall not be altered to his disadvantage during his continuance in the public service of the Republic on or after that date."

Then I turn to paragraph 3 which reads as follows :-

> "Where any holder of an office mentioned in paragraph 1 and 2 of this Article is not appointed in the public service of the Republic he shall be entitled, subject to the terms and conditions of service applicable to him, to just compensation or pension on abolition of office terms out of the funds of the Republic whichever is more advantageous to him."

Regarding what is public service, I propose reading from paragraph 7 of the same article :-

> "For the purposes of this Article —
>
> (a) 'public service' in relation to service before the date of the coming into operation of this

Constitution means service under hte Government of the Colony of Cyprus and in relation to service after that date means service in a civil capacity under the Republic and includes service as a member of the security forces of the Republic;

(b) 'terms and conditions of service' means, subject to the necessary adaptations under the provisions of this Constitution, remuneration, leave, removal from service, retirement pensions, gratuities or other like benefits."

What then is the purpose of paragraph 1 of Article 192.

In *A. Rifat Sheher* and *The Republic* (1962) 3 R.S.C.C. 138, the Supreme Constitutional Court said at pp. 141 - 142 :-

"The object of paragraph 1 of Article 192 is to ensure to a person, who held an office in the public service before the date of the coming into operation of the Constitution the continuance of the same terms and conditions of service as were applicable to him at the said time. If, there, the office which a person held before the said date was not one which he held substantively but was one in the nature of a temporary appointment, e.g. an acting appointment or an appointment on secondment, then under paragraph 1 of Article 192, being only entitled to the same terms and conditions as were applicable to him before the date of the coming into operation of the Constitution, such a person continues to be subject to the same temporary arrangement. In other words, just as an acting appointment or an appointment on secondment could have been terminated before the coming into operation of the Constitution, so it could likewise be terminated after the coming into operation of the Constitution.

In the opinion of the Court it was not, and could not have been, the intention of paragraph 1 of Article 192 of the Constitution to give the holder of a public office any greater security of tenure of

office than that which he possessed before the coming into operation of the Constitution. An acting appointment of a person, or his appointment on secondment, does not automatically become a substantive and permanent appointment by virtue of paragraph 1 of Article 192."

In *Christou* (*supra*), the Supreme Constitutional Court said at p. 5 :- ,

"With regard to Article 125 it must be decided whether or not applicants at the time of the termination of their employment were 'public officers', in the sense of the said Article. In the opinion of the Court the applicants were not 'public officers' in the above sense, because under Article 122 'public officer' is defined as the holder of a public office and 'public office' is defined as an office in the public service and a person employed on daily wages by a Department, in a post for which no specific budgetary provision exists, as such, as in this Case, cannot be said to be holding a public office in the public service in the sense of Article 122. It must, also, be observed in this connection that, in the opinion of the Court, the applicants at the time could not, in any case, be said to be 'workmen' in the sense of the definition of 'public service' in Article 122.

Thus, the termination of the employment of applicants was properly made by their own Department. Such termination became necessary because in the meantime specific budgetary provision having been made for the posts at which applicants were being employed, the interested parties and others were appointed thereto, as above, to perform the duties performed up to then by applicants."

Pausing here for a moment, it would be observed that the terms and conditions of service of both applicants are contained in the instrument of appointment.

Regarding the first applicant, he was told by the Registrar quite clearly that his engagement could at any time be determined without assigning any reason by giving him one month's notice in writing or on paying

him one month's salary in lieu of notice; in paragraph (f) he was advised that he could at any time determine his engagement upon giving to the Registrar one month's notice in writing; and in paragraph 2 it was made abundantly clear to him that he was not entitled to any Government gratuity, and he was advised to contribute to the provident fund of the Co-operative Central Bank Limited.

Regarding the second applicant, he was warned by the Registrar on the same lines as the first applicant, and was told quite clearly that since he would not be entitled to any Government gratuity, he was also advised to contribute to the provident fund of the Co-operative Central Bank Limited.

With this in mind, I think that the difference between the two applicants as presented by counsel on behalf of the applicants, is that the first one started as a Government employee, changed in 1947 to supervisor (because of his own application) and ended as supervisor in August, 1960. The second applicant started as supervisor in 1947 (because of his own application) and in 1956 - 57 he became a Government employee, *viz.* a District Inspector in the Co-operative Societies, and then he finished as a Government employee. When the Government came to pay compensation to the first applicant, they said they would pay him no compensation at all, because the post of supervisor is not a Government post, and in the case of the second, they said that he would receive compensation during the years from 1955 - 56 which was Government service, but from 1945 - 55 he would receive no compensation. In effect, then, the one is complaining because he received no compensation at all, and the other is complaining because he received less compensation.

I think that once the evidence of Mr. Charalambos Artemis, the Director of the Department of Personnel, has been by consent introduced into these proceedings, I propose referring to certain extracts from his evidence, in order to see what was the position at the material time. Mr. Artemis was giving evidence on the 19th April, 1967, in Case No. 311/62, relating to the post of supervisor. I propose quoting from p. 17 of the notes :

"As from 1947, the posts of Supervisors of Co-operative Societies were not provided for in the Government Estimates.

As it appears from the official Gazette of the 4th August, 1962, notification 1017, Schedule 5, there are categories of persons who are not public officers and yet are entitled, like public officers, to free medical treatment.

In other words, a person may not be a public officer and yet be entitled to the term of service of free medical treatment.

Now by an amendment of the relevant provision all priests of the Greek Orthodox Church are entitled to free medical treatment.

When the revision of salaries took place in 1955/56, the Supervisors were not included in the relevant Report on the revision of salaries, but their employer, who was the Registrar of Co-operative Societies, as Administrator of the Audit and Supervision Fund, revised their emoluments on the same basis. The other members of the staff of the Department of Co-operation, who were at the time considered as members of the public service, were included in the general revision of salaries along with the other public officers in Government service, but not the Supervisors.

No term of service applicable to public officers was automatically applied to Supervisors. It was adopted and applied by their employer, the Registrar.

The post of Inspector of Co-operative Societies was a first entry post, as far as I know; but inspectors were appointed from among Supervisors because of the experience of Supervisors in the relevant work."

Now I propose showing what is the definition of public service and I find it also constructive to state that in accordance with s. 2(1) of the Pensions Law, Cap. 311 at p. 4:-

"'public service' means service in a civil capacity under the Government of Cyprus or the Go-

vernment of any other part of Her Majesty's dominions, or of any British Protected state, Protectorate or territory under British Mandate or of the Anglo-Egyptian Sudan, or under the High Commissioner for Transport in Kenya and Uganda, and service which is pensionable under the Teachers (Superannuation) Act, 1925, or any Act amending or replacing the same, and any such other service as the Secretary of State may determine to be 'public service' for the purpose of any provisions of this Law...

'salary' means the salary attached to a pensionable office or, where provision in made for taking service in a non-pensionable office into account as pensionable service, the salary attached to that office."

Reverting now to paragraph 7 of Article 192 of the Constitution, the words "terms and conditions of service" have been construed by the Supreme Court in *Boyiatzis* v. *The Republic*, 1964 C.L.R. 367. Mr. Justice Josephides, delivering the judgment of the Court said at pp. 374 - 375 :-

"In interpreting the expression 'terms and conditions of service' one has to look at the actual terms and conditions enjoyed by public officers prior to Independence and not to adhere literally to the words appearing in that definition. For instance, the expression 'terms and conditions of service' includes also 'removal from service'. If one interprets literally these three words surely 'removal from service' as such is not a term or condition of service which was intended to be safeguarded in favour of a public officer under Article 192. In interpreting that expression ('removal from service') one has to bear in mind the principles underlying disciplinary procedure as envisaged in the Colonial Regulations (1956) (regulations 55 to 68), subject to the necessary adaptations under the provisions of the Constitution. Those regulations embody the rules of natural justice in disciplinary proceedings, that is to say, that the public officer is entitled—(a) to know the grounds upon which it is intended to

dismiss him, and (b) to be given an adequate opportunity of making his defence.

Likewise in interpreting the expression 'remuneration' and 'or other like benefits' one has to look at the Government General Orders and circulars then in force (*i.e.* the 15th August, 1960), as these included many of the terms and conditions of the public service. If we were to accept the submission of respondent's counsel that the latter expression refers only to provident fund and to no other benefit, then this would mean that free medical treatment and dental treatment are no longer part of the terms and conditions of service of public officers, which could not be seriously maintained."

In the light of all the circumstances of this case, and for the reasons I have endeavoured to advance, I have reached the conclusion that both applicants have failed to bring their case within the provisions of paragraph 7(a) of Article 192, and because the salary attached to the office of supervisor held by the applicants did not come from specific budgetary provisions. As I have said earlier, both applicants have elected to accept the office of supervisor of co-operative societies, fully aware from the terms and conditions contained in the instrument of their engagement that, such service was not public service under the Government of Cyprus, and because all along they knew that they were not entitled to receive any gratuities from the Government. I think, therefore, that the Director of Personnel rightly, in my view, came to the conclusion that both applicants were not entitled to be paid compensation under Article 192.3 for the reasons given in his letters to both applicants of October 4, 1969. Needless to add, in the case of both applicants who became depositors to the provident fund of the employees upon their appointment to the post of assistant co-operative officers, they received the total amount standing to their credit in the said fund and an amount of £444 and £217, representing the employers audit and supervision funds deposits, were paid to the first and second applicants respectively. In these circumstances, I would dismiss the contention of counsel that the applicants are entitled to be paid just compensation.

Regarding the further complaint of counsel that the respondents have treated both applicants in a discriminatory manner, vis-a-vis the other persons who held the office of supervisor, because once the latter have been paid compensation, I think that I must state that in going through some of the cases settled in Court, one finds that no reasons were given either by counsel or by the trial Court for the amicable settlement; and certainly, the respondents in agreeing to pay compensation they made no concession that the post of supervisor was a Government service post or, indeed, was service under the Government of Cyprus. Furthermore, in going through the list of the cases settled in Court, one would observe that with regard to these cases in hand, the administration drew the distinction in not agreeing to accept settlement of the latter cases, because the facts are different from the other cases, and for the reasons I have given earlier. The question, therefore, which is posed is whether the administration in taking that decision has acted contrary to the provisions of the Constitution in refusing to pay compensation to the applicants. There is no doubt that the requirement against discriminatory treatment and/or equal protection is safeguarded by Articles 6 and 28 of the Constitution. In *Mikrommatis* and *The Republic*, 2 R.S.C.C. 125, it was said by the Court at p. 131 that "the term 'equal before the law' in paragraph 1 of Article 28 does not convey the notion of exact arithmetical equality but it safeguards only against arbitrary differentiations and does not exclude reasonable distinctions which have to be made in view of the intrinsic nature of things. Likewise, the term 'discrimination' in paragraph 2 of Article 28 does not exclude reasonable distinctions as aforesaid."

Regarding the "equal protection" it has been said in a number of cases that no impediment should be interposed to the pursuits by anyone except as applied to the same pursuits by others under the circumstances: That no greater burdens should be laid upon one than are laid upon others in the same calling and condition; (*Lindsley* v. *Natural Carbonic Gas Co.*, (1910) 220 U.S. 61). Of course, equal protection, however, does not prevent reasonable legislative classification, because equal protection of the laws means subjection to equal laws

applying to all in the same circumstances. (*Magoun* v. *Illinois Trust,* (1898) 70 U.S. 283); also *Lindsley* (*supra*). In fact, the equal protection does not prevent a State from adjusting its legislation to differences in situation or forbid classification for that purpose, but it does require that the classification be not arbitrary, but based on a real and substantial difference, having a reasonable relation to the subject of the particular legislation. In *Tigner* v. *Texas,* (1940) 310 U.S. 141, it was held that the Article does not require things which are different in fact or in law to be treated as though they were the same. Thus, it appears that the reasonableness of classification would depend upon the purpose for which the classification is made.

Of course, since no act or decision of any organ, authority or person in the Republic exercising executive powers or administrative functions shall discriminate against any person, I propose proceeding to examine whether the decision of the respondents is a reasonable and not an arbitrary one. Counsel on behalf of the Republic has contended that the said decision in settling the cases in Court, was not based on the provisions of the law, but on various considerations, including moral grounds.

Having heard argument on behalf of all parties, and in the light of all the material before me, I have reached the view that irrespective of any admissions having been made in Court on behalf of the Council of Ministers in settling the other cases, I think that it was reasonable for the respondents to differentiate the cases in hand from the other cases because, as I said earlier, the applicants have accepted the post of supervisor fully aware that they would not be Government officials.

In view of what I have said, I find that the decision of the respondents does not discriminate against the applicants, and it is, therefore, not contrary to any of the provisions of this Constitution or of any law, nor is it made in excess or abuse of powers vested in such organ. I would, therefore, dismiss both applications with no order as to costs.

Applications dismissed.
No order as to costs.